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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**ENTERED  
Office of Proceedings**

**AUG 8 - 2011**

**Part of  
Public Record**

**E.I. DUPONT DE NEMOURS AND COMPANY**

**Complainant,**

**v.**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Defendant.**

**Docket No. NOR 42125**

**ANSWER TO SECOND AMENDED COMPLAINT**

Pursuant to 49 C.F.R. § 1111.4 and other applicable law and authority, Defendant Norfolk Southern Railway Company ("NS") respectfully submits this Answer to the Second Amended Complaint filed by Complainant E.I. du Pont de Nemours and Company ("DuPont") in STB Docket No. 42125 on July 18, 2011 ("Second Amended Complaint").

While DuPont states that its Second Amended Complaint is "materially the same" as the First Amended Complaint DuPont filed on May 11, 2011 ("First Amended Complaint"), NS notes that the Second Amended Complaint differs in several significant respects from the First Amended Complaint. The Second Amended Complaint withdraws challenges to NS's rates for five movements included in the First Amended Complaint, without any explanation for the reasons they were included in the First Amended Complaint but now have been dropped. Four of these lanes were in the Complaint filed by DuPont on October 7, 2010 ("Initial Complaint") but DuPont just added one of the lanes when it filed the First Amended Complaint. Nonetheless, in order to avoid unnecessary delay in these proceedings, NS does not object to DuPont's further

amendment of its Initial Complaint. However, NS reserves all of its rights to oppose or object to any future amendment.

NS denies all of the allegations of the Second Amended Complaint except where this Answer specifically states otherwise.

In response to the unnumbered paragraph on page 1 of the Second Amended Complaint, NS denies that DuPont has paid or will pay common carrier rates in excess of reasonable maximum levels for NS's transportation of the movements set forth in the Second Amended Complaint; denies that the Board has jurisdiction over all the issue movements; denies that DuPont has joined all necessary parties to this litigation; and denies that DuPont is entitled to any relief in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of DuPont's Second Amended Complaint, to which no response is required. To the extent that any such response is required, NS denies the remaining allegations of this paragraph.

With respect to the numbered paragraphs of the Second Amended Complaint, NS responds as follows:

1. NS lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Second Amended Complaint. To the extent a response is required, NS denies the allegations of Paragraph 1.

2. NS admits the first two sentences of Paragraph 2 of the Second Amended Complaint. With respect to the third sentence of Paragraph 2, NS admits that it is generally subject to the ICC Termination Act of 1995 and that some of its rates and practices are subject to the jurisdiction of the Board.

3. Paragraph 3 of the Second Amended Complaint consists of a characterization of DuPont's Second Amended Complaint, to which no response is required. To the extent a response is required, NS admits that the Second Amended Complaint purports to challenge NS's rates for certain movements set forth in the Exhibits to the Second Amended Complaint. NS denies that the Second Amended Complaint accurately states NS's common carrier rates for all of the challenged movements and denies that the Board has jurisdiction to consider the reasonableness of NS's rates for all the challenged movements. To the extent a further response is required, NS denies the remaining allegations of Paragraph 3.

4. With respect to the allegations of Paragraph 4 of the Second Amended Complaint, NS denies that it "transports" commodities for DuPont between all the points identified in Exhibit A, in part because several of the traffic lanes named in the Second Amended Complaint have moved no traffic in recent years. NS admits that it transports the identified commodities for DuPont between some of the points named in Exhibit A. To the extent a further response is required, NS denies the allegations of Paragraph 4.

5. With respect to the allegations of Paragraph 5 of the Second Amended Complaint, NS denies that it "transports" commodities for DuPont between all the points identified in Exhibit B, in part because several of the traffic lanes named in the Second Amended Complaint have moved no traffic in recent years. NS admits that it transports the identified commodities for DuPont between some of the points named in Exhibit B. To the extent a further response is required, NS denies the allegations of Paragraph 5.

6. With respect to the allegations in the first sentence of Paragraph 6 of the Second Amended Complaint, NS admits that prior to June 1, 2009 it transported the identified commodities for DuPont between some of the points named in Exhibit A and Part 1 of Exhibit B.

NS denies that it transported commodities for DuPont between all the points identified in Exhibit A and Part 1 of Exhibit B. With respect to the second sentence of Paragraph 6 of the Second Amended Complaint, NS admits that common carrier tariff rates consolidated at NSRQ 64869 and 65720 became applicable upon expiration of the Master Contract.

7. With respect to the allegations in the first sentence of Paragraph 7 of the Second Amended Complaint, NS admits that prior to June 15, 2010 it transported the identified commodities for DuPont between some of the points named in Exhibit A and Part 2 of Exhibit B. NS denies that it transported commodities for DuPont between all the points identified in Exhibit A and Part 2 of Exhibit B. With respect to the second sentence of Paragraph 7 of the Second Amended Complaint, NS admits that common carrier tariff rates consolidated at NSRQ 65718, 65720, and 70022 became applicable upon expiration of the Master Contract.

8. With respect to the allegations in Paragraph 8 of the Second Amended Complaint, NS admits that it established common carrier rates in NSRQ 65720 for all the movements in Part 3 of Exhibit B except for Lane 125. The rate challenged for Lane 125 is an NS mileage scale rate that has not been used to transport any traffic for that lane. None of the rates DuPont lists in Part 3 of Exhibit B arise from NSRQ 70022.

9. With respect to the allegations of Paragraph 9 of the Second Amended Complaint, NS denies that the Second Amended Complaint accurately states NS's common carrier rates for all of the challenged movements. Furthermore, at this early stage of this case, NS lacks sufficient information to admit or deny DuPont's allegations regarding R/VC ratios. To the extent a further response is required, NS denies the remaining allegations of Paragraph 9.

10. Paragraph 10 of the Second Amended Complaint consists of a characterization of DuPont's Second Amended Complaint, to which no response is required. To

the extent a response is required, NS admits that the Second Amended Complaint purports to challenge NS's rates for certain movements set forth in the Exhibits to the Second Amended Complaint. NS denies that the Second Amended Complaint accurately states NS's common carrier rates for all of the challenged movements and denies that the Board has jurisdiction to consider the reasonableness of NS's rates for all the challenged movements. To the extent a further response is required, NS denies the remaining allegations of Paragraph 10.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, NS denies Paragraph 11.

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent a response is required, NS states that at this early stage of this case, NS lacks sufficient information to admit or deny DuPont's allegations regarding R/VC ratios. To the extent a further response is required, NS denies Paragraph 12.

13. Paragraph 13 states a legal conclusion to which no response is required. To the extent a response is required, NS denies that it is the only rail carrier that provides service at either the origin or destination for all the challenged movements and denies that there is a lack of effective competition from non-rail modes for all the challenged movements.

14. Paragraph 14 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 15.

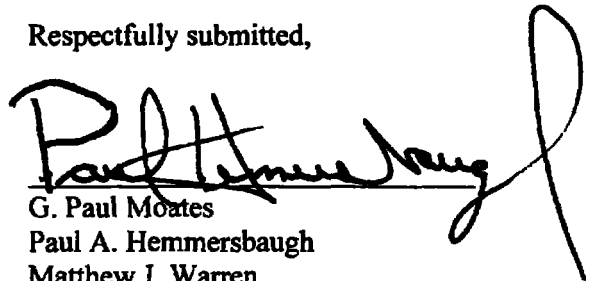
16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required.

To the extent that a response is necessary, NS denies Paragraph 17.

The unnumbered final paragraph of the Second Amended Complaint (on pages 5 and 6) states legal conclusions and requests for relief to which no response is required. To the extent a response is deemed necessary, NS denies the allegations, conclusions, and requests for relief in that final paragraph, including clauses numbered 1 through 6, and denies that DuPont is entitled to any of the relief it seeks in this proceeding, or to any other relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Hemmersbaugh", is written over a horizontal line. The signature is stylized with a large initial "P" and a long, sweeping tail that extends to the right.

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*Counsel to Norfolk Southern Railway Company*

Dated: August 8, 2011

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August, 2011, I caused a copy of the foregoing Answer of Norfolk Southern Railway Company to the Second Amended Complaint of E.I. du Pont de Nemours and Company to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

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